

(Rev. 5/05)

**FORM TO BE USED BY A PRISONER IN FILING A COMPLAINT
UNDER THE CIVIL RIGHTS ACT, 42 U.S.C. §1983**

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF DELAWARE**

(1) Kevin C. Brathwaite [#]315294
 (Name of Plaintiff) (Inmate Number)
1181 Paddock Rd
Smyrna DE. 19977
 (Complete Address with zip code)

07-006

(2) _____
 (Name of Plaintiff) (Inmate Number)

 (Case Number)
 (to be assigned by U.S. District Court)

 (Complete Address with zip code)

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

vs.

CIVIL COMPLAINT

(1) Correctional Medical Services
 (2) DR. SCOTT AITMAN
 (3) DR. CATHY KIONKE
 (Names of Defendants)

• • Jury Trial Requested

2007 JAN -5 PM 2:57

DISTRICT OF DELAWARE

(Each named party must be listed, and all names
must be printed or typed. Use additional sheets if needed)

I. PREVIOUS LAWSUITS

A. If you have filed any other lawsuits in federal court while a prisoner, please list the caption and case number including year, as well as the name of the judicial officer to whom it was assigned:

04-1542 - 2004 - Gregory M. Sleet
UNKNOWN - 1998 - Sue C. Robinson
UNKNOWN - 2000 - Gregory M. Sleet

II. EXHAUSTION OF ADMINISTRATIVE REMEDIES

In order to proceed in federal court, you must fully exhaust any available administrative remedies as to each ground on which you request action.

- A. Is there a prisoner grievance procedure available at your present institution? ☒ • Yes • ☐ No
- B. Have you fully exhausted your available administrative remedies regarding each of your present claims? ☒ • Yes • ☐ No
- C. If your answer to "B" is Yes:
1. What steps did you take? Wrote letters, Filed grievances
 2. What was the result? Denied
- D. If your answer to "B" is No, explain why not: N/A

III. DEFENDANTS (in order listed on the caption)

- (1) Name of first defendant: _____
 Employed as _____ at _____
 Mailing address with zip code: _____
- (2) Name of second defendant: _____
 Employed as _____ at _____
 Mailing address with zip code: _____
- (3) Name of third defendant: _____
 Employed as _____ at _____
 Mailing address with zip code: _____

(List any additional defendants, their employment, and addresses with zip codes, on extra sheets if necessary)

District of Delaware

Kevin C. Brathwaite
Plaintiff

V.

C.A. Action #

07-006

Correctional Medical Services,
Scott S. Altman,
Dr. Cathy Kionke,
Gail Eller
Defendants

COMPLAINT

First Cause of Action

1. Plaintiff, Kevin C. Brathwaite is an inmate at the Delaware Correctional Center.
2. The Defendants are employees of Correctional Medical Services, which is the medical provider under contract to provide medical and dental care to the inmates that are housed within the facilities of the Delaware Department of Corrections.

3. These defendants are being sued in their individual AND official capacities, AS they neglected to perform their duties under the color of State law AND the United States Constitution.

4. These Defendants are AS follows:

Correctional Medical Services
1201 College Park Drive
Suite - 101
Dover DELAWARE, 19904

Scott S. Altman
1201 College Park Drive
Suite - 101
Dover Delaware, 19904

DR. Cathy Kionke
1201 College Park Drive
Suite - 101
Dover Delaware, 19904

Gail Eller
1201 College Park Drive
Suite - 101
Dover Delaware, 19904

STATEMENT OF CLAIM

ON October, 9th, 2004 this PLAINTIFFS teeth were Knocked loose AND damaged due to AN ASSAULT by Correctional officers. The damage WAS recorded in this PLAINTIFFS Medical File. After Waiting Numerous Months to be treated by the dentist, this PLAINTIFF Submitted A Sick call request AND wrote ~~at~~ A letter to the dental department, ON JULY, 14th, 2005.

After Waiting Four Months without being treated, this PLAINTIFF Submitted ANOTHER Sick call request ON November, 3rd, 2005. Sick call request were ALSO Submitted ON JANUARY, 3rd, 2006, FEBRUARY, 3rd, 2006, MARCH, 3rd, 2006.

IN June, 2006, this PLAINTIFF wrote A letter to Governor Ruth ANN Minner's office to Complain About this problem. AND the Governors office Forwarded the letter to The Commissioner of Corrections. AND the Commissioner Forwarded the letter to The MAIN office of Correctional Medical Services, (C.M.S.) ON June, 8th this PLAINTIFF

WAS CALLED out to the the interview room to be seen by DR. KIONKE. DR. KIONKE put on a rubber glove AND Felt this Plaintiff's gums in the front of his mouth. DR. KIONKE then told this Plaintiff that the damage that WAS done to his front teeth has developed AN infection AND would require A root CANAL or AN extraction. When this Plaintiff told the Doctor that he preferred A root CANAL so he wouldn't have to have his front teeth pulled, he WAS told that the only way he could get A root CANAL would be if it got approved by the Department of Corrections. This Plaintiff WAS also told that the other damaged teeth that needed fillings since Oct, 9th, 2004 would not be filled for at least ANOTHER 9-12 months. A grievance WAS filed ON JUNE, 8th, 2006 AND WAS denied five months later ON NOVEMBER, 14th, 2006. ON JULY, 14th, 2006 this Plaintiff received A letter from Scott Altman dated July, 11th, 2006. The letter clearly states that

(4)

this Plaintiff would be seen within thirty (30) days to be given the proper care. AND AS OF today, this plaintiff still has not been treated AND All of the damage to his teeth has gotten worse. ON September, 25th, 2006 this Plaintiff WAS sent to the dentist office. This Plaintiff thought he would finally get the treatment that he has been needing for the past two (2) years. But that was not the case. He received NO treatment at all. NO exam, NO x-rays not anything. He was told by DR. Kionke that he had been called to her office for the sole purpose of signing off on the grievances that he had filed. When this Plaintiff told DR. Kionke that he would not sign off on the grievances, DR. Kionke told him that it would be another 9-12 months before he has ~~treatm~~ treatment. DR. Kionke said this in the presence of two (2) officers.

DR. Kionke also claimed that the root canal would have to be approved by the department of corrections, but she never submitted anything to the warden to be approved. On December, 16th, 2006 this plaintiff finally had another grievance hearing. And when he explained the fact that all of his dental problems were continuously being ignored, the medical staff person in charge of the hearing, Gail Eller, told him that she did not believe him when he told her that his front teeth had developed an ~~it~~ infection, because if he had an infection the dentist would have prescribed antibiotics. And the grievances were denied. On Nov, 30th, 2006 this plaintiff was seen by another dentist, DR. Kimble. And DR. Kimble, finally went through the proper procedures of an examination and x-rays. And DR. Kimble did conclude that this plaintiff's front teeth did in fact develop an infection. And as a result of these findings DR. Kimble, wrote a letter or memo to

DR. Kionke, Stating that the proper paperwork needed to be sent to the Warden to be approved for the root canal. It has been well over two (2) years since this Plaintiff has been requesting the proper dental care that he is entitled to. AND he has also exhausted his administrative remedies in attempts to have his dental needs met. By this constant and blatant disregard of the health care of this Plaintiff, these defendants have violated the constitutional rights of this Plaintiff.

AFFIDAVIT

I Kevin c. Brathwaite, States that ON NUMEROUS OCCASSIONS over the past twenty six (26) MONTHS I have continuously attempted to be treated by the dental department At the Delaware Correctional Center. The First Complaint of dental problems WAS due to AN ASSAULT that took place against me At the hands of Correctional Officers on October, 9th, 2004. I Submitted numerous Sick call request AND grievance Complaints, AND NONE of my Attempts have been successful. Due to the Continuous Neglect of the dental STAFF, My Gums AND teeth have developed AND infection. AND my teeth that needed new fillings have gotten much worse AND will now need more extensive work.

I AFFirm this Statement Under PENALTY of Perjury.

Brian D. Engrem
Notary

Brian D. Engrem
Notary Public, State of Delaware
My Commission Expires June 14, 2008
(8)

Kevin c. Brathwaite
315294

1181 Paddock Rd.
Smyrna DE. 19977

Relief Sought

This Plaintiff request the Following relief:

1. All Necessary cosmetic procedures to correct the damage to teeth that could have been prevented.
2. That these defendants be ordered to pay Fifty Thousand dollars (\$50,000) each for violating this Plaintiffs Constitutional right to receive medical AND dental treatment.
3. That these defendants be ordered to pay Fifty Thousand dollars (\$50,000) each for pain AND suffering.
4. That these defendants be ordered to pay one Hundred AND Fifty thousand dollars each (\$150,000) for punitive damages.

IM KEVIN C. BRATHWAITE
SBI# 315294 UNIT _____
DELAWARE CORRECTIONAL CENTER
1181 PADDOCK ROAD
SMYRNA, DELAWARE 19977



United States District
Office of the Clerk
844 N. KING ST.
Wilmington DE.
19801



To: Dental Dept
From: Kevin C. Brathwaite #315294

RE: Treatment Request

DATE: July, 14th, 2005

I have made numerous request to get dental treatment on my damaged front teeth AND to get my fillings repaired AND all of my request have gone UNANSWERED. So at this time I am requesting once again that I get treatment for my dental problems.

THANK YOU

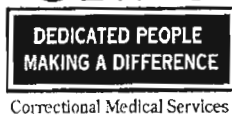


C.C.

Warden Carroll
File

EXHIBIT-A

(10)



Kevin Brathwaite
SBI 315294 SHU 17 BL8
1181 Paddock Road
Smyrna, DE 19977

11 July 2006

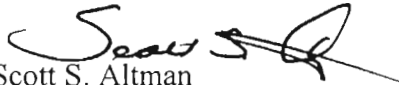
Dear Mr. Brathwaite,

I have received your letter dated 23 June 2006. I appreciate your patience in letting us deal with this matter.

I reviewed your record on 11 July 2006 and only noted one sick call request for care on 5/22/06. You were seen by Dr Kionke on 6/8/06 and placed on the list for fillings. Due to the large volume of people that have not had routine care prior to their incarceration it is necessary for us to prioritize our patients. I verified today that you are on the list for this care and should be seen within the next 30 days.

Please contact me if you require further assistance.

Your Partner in Healthcare,


Scott S. Altman
Quality Assurance Monitor
Correctional Medical Services

CC: Warden Thomas Carroll
Medical Record

EXHIBIT-B

GRIEVANCE INFORMATION - Appeal**OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Unresolved	Resolution Status :	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

APPEAL REQUEST

Appeal received 14 November 2006.

Inmate states: The damage that was done to my front teeth is of no fault of mine. An infection has developed that requires a root canal. This problem has been ongoing since Oct., 9th 2004. the dentist told me that the only way I can get a root canal is if it gets approved by the DOC. The infection on my front teeth seems to be getting worse. So at this time I am requesting that my front teeth be repaired and that I get a root canal as soon as possible.

REMEDY REQUEST

EXHIBIT - C

GRIEVANCE INFORMATION - MGC**OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46948	Grievance Date : 06/08/2006	Category : Individual
Status : Unresolved	Resolution Status :	Inmate Status :
Grievance Type : Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

MGC**Date Received** : 09/27/2006**Date of Recommendation**: 11/16/2006**GRIEVANCE COMMITTEE MEMBERS**

Person Type	SBI #	Name	Vote
Staff		Eller, Gail	Deny
Staff		Branch, Adriene	Deny
Staff		Gordon, Oshenka	Deny
Staff		McCreanor, Michael	Abstain

VOTE COUNT**Uphold** : 0**Deny** : 3**Abstain** : 1**TIE BREAKER**

Person Type	SBI #	Name	Vote
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RECOMMENDATION

Hearing held Monday 13 November 2006.

Deny: Submit a sick call request for the dentist about ? infection in front teeth.

Inmate supplied with an appeal form at the end of the hearing.

Appeal form due by Monday 20 November 2006.

EXHIBIT - E

GRIEVANCE INFORMATION - Appeal**OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C	SBI# : 00315294	Institution : DCC
Grievance # : 46949	Grievance Date : 06/08/2006	Category : Individual
Status : Unresolved	Resolution Status :	Inmate Status :
Grievance Type: Health Issue (Medical)	Incident Date : 06/08/2006	Incident Time :
IGC : Merson, Lise M	Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single	

APPEAL REQUEST

Appeal received 14 November 2006.

Inmate states: Over the past two (2) years I have submitted numerous sick call request to have my fillings replaced and nothing has been done. On Sept, 25th I was called to the dentist office and she didn't even examine my teeth or do x-rays or anything. all she did was ask me to sign off on a grievance. When I refused to sign off, she told me I would not be seen for Nine (9) to twelve (12) months. The damage to my teeth is only getting worse and it's already been over two (2) years.

REMEDY REQUEST

EXHIBIT-D

GRIEVANCE INFORMATION - MGC**OFFENDER GRIEVANCE INFORMATION**

Offender Name : BRATHWAITE, KEVIN C SBI# : 00315294 Institution : DCC
 Grievance # : 46949 Grievance Date : 06/08/2006 Category : Individual
 Status : Unresolved Resolution Status: Inmate Status :
 Grievance Type: Health Issue (Medical) Incident Date : 06/08/2006 Incident Time :
 IGC : Merson, Lise M Housing Location : Bldg 17, Lower, Tier B, Cell 8, Single

MGC

Date Received : 09/27/2006

Date of Recommendation: 11/16/2006

GRIEVANCE COMMITTEE MEMBERS

Person Type	SBI #	Name	Vote
Staff		Eller, Gail	Deny
Staff		Gordon, Oshenka	Deny
Staff		Branch, Adriene	Deny
Staff		McCreanor, Michael	Abstain

VOTE COUNT

Uphold : 0

Deny : 3

Abstain : 1

TIE BREAKER

Person Type	SBI #	Name	Vote
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RECOMMENDATION

Hearing held Monday 13 November 2006.
 Deny: Inmate on dental list - They will schedule inmate as his time arrives.
 Inmate supplied with an appeal form at the end of the hearing.
 Appeal form due by Monday 20 November 2006.

EXHIBIT-D

EXHIBIT-E

TO: Scott S. Altman

From: Kevin C. Brathwaite #315294

RE: Letter dated July, 11th, 2006

DATE: November, 30th, 2006

MR. ALTMAN,

Per your letter dated July, 11th, 2006, you stated that I would be receiving dental treatment within thirty (30) days. Well it's be almost five (5) months AND I still haven't been treated. It's been over two (2) years since this damage has been done to my teeth AND now today I WAS told by Dr. Kimble that my front teeth did in fact develop an infection. So at this time I am requesting ONCE AGAIN to be treated with the proper dental care.

c.c.
File

(16)

Sincerely

